

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**GLEND A SUE CLAUS,
RESPONDENT
vs.**

**INTRIGUE HOTELS, LLC,
APPELLANT**

DOCKET NUMBER WD71976

DATE: DECEMBER 28, 2010

Appeal from:

Jackson County Circuit Court
The Honorable Ann Mesle, Judge

Appellate Judges:

Division One: Thomas H. Newton, P.J., James M. Smart, Jr. and Joseph M. Ellis, JJ.

Attorneys:

Kristi L. Kingston, for Respondent

Dennis J. Cassidy, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**GLEND A SUE CLAUS, RESPONDENT
v.
INTRIGUE HOTELS, LLC, APPELLANT**

WD71927

Jackson County, Missouri

Before Division One Judges: Thomas H. Newton, P.J., James M. Smart, Jr. and Joseph M. Ellis, JJ.

Intrigue Hotels, L.L.C. appeals from a judgment entered in the Circuit Court of Jackson County in favor of Glenda Claus in her action for age discrimination, awarding her \$50,000.00 in actual damages and \$150,000.00 in punitive damages.

AFFIRMED and REMANDED FOR AWARD OF ATTORNEY'S FEES AND COSTS.

Division One holds:

- (1) Viewed in the light most favorable to the judgment, the record contains sufficient evidence to support a finding that age was a factor in Intrigue's firing of Claus.
- (2) The record contains sufficient evidence to support a finding that Intrigue's firing of Claus was outrageous because of Intrigue's evil motive or reckless indifference to Claus's rights. In particular, the jury had before it evidence that Claus's supervisor had an extensive knowledge of employment law. Both the supervisor and company president knew it was against the law to fire an employee because of an employee's age. Yet they fired Claus, a 63-year-old employee, with a spotless record in 23 years of employment, and replaced her with someone in her thirties who had been written up multiple times for excessive absences. At the same time Claus was being fired, several younger employees with documented performance problems were retained and even promoted or given raises. Moreover, Appellant altered its rationale for firing Claus several times and created pretextual reasons for the firing. Based on this, and the other evidence in the record, the jury reasonably could find that the supervisor, knowing that it was illegal, fired Claus because of her age, preferring younger employees that would be there for the "long haul."
- (3) Appellant failed to challenge on appeal the grounds expressed by the trial court for excluding from evidence testimony about the dire financial

condition of Intrigue at the time of trial. Accordingly, the trial court cannot be deemed to have abused its discretion in excluding that evidence.

- (4) The motion court did not abuse its discretion in refusing to grant remittitur of the punitive damages awarded by the jury. At the time the jury returned its incomplete verdict form, it had not yet heard arguments on the issue of punitive damages and, more importantly, had not yet been instructed on how to assess punitive damages. Thus, at the time the incomplete verdict form was returned, the jury had no knowledge or understanding of the legal basis for punitive damages or how to award them. The fact that the jury stated that it had included punitive damages in the \$130,000.00 damage award in the incomplete verdict form does not in any way prove that the jurors intended only \$50,000.00 in compensatory damages and the balance in punitive damages. Since the jury was uninformed at the time, it is no less likely that it intended \$129,999.00 in compensatory damages and \$1.00 in punitive damages. Moreover, even assuming, *arguendo*, that the jury definitely intended to award \$80,000.00 in punitive damages at the time the incomplete verdict form was returned, the jury had every right after arguments and proper instruction to decide on a different amount as a result of having a proper understanding of how they were to assess punitive damages.
- (5) The trial court did not abuse its discretion in excluding as irrelevant evidence that Intrigue was experiencing financial difficulties and that a bank had taken over the operation of the hotel at the time of trial.
- (6) The trial court did not abuse its discretion in excluding from evidence a document Appellant sought to introduce as a business record where the witness through which Appellant sought to introduce that document did not establish a sufficient foundation for its admission. The witness offered no testimony specifically addressing the mode of the exhibit's preparation or whether it was prepared in the regular course of business at or near the time of the meeting it sought to memorialize.
- (7) Appellant failed to identify what prejudice, if any, it suffered as a result of the trial court's admission into evidence of Appellant's response letter to the Missouri Commission on Human Rights. Accordingly, its claim that the trial court abused its discretion in admitting that exhibit must fail.
- (8) "Hammer instructions" are not improper merely because no such instruction is included in the Missouri Approved Instructions for civil cases, and nothing in the record indicates that the verdict was coerced.
- (9) This Court has the authority, under the case law and applicable statutory language, to grant Claus's motion for attorney's fees and costs related to

her appeal as the prevailing party in a human rights action pursuant to § 213.111.2.

Opinion by: Joseph M. Ellis, Judge

Date: December 28, 2010

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